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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-202042

DATE: May 15, 1981

MATTER OF: Numax Electronics Inc.

DIGEST:

Alleging
[Protest that low bidder fails to meet definitive responsibility standard] set forth in IFB is denied where contracting officer, after preaward survey, determined low bidder does meet standard based on substantial, objective evidence; moreover, protester offers no evidence to support its contention.

Numax Electronics Inc. (Numax) [protests the proposed award of a contract] to Ni-Tec, Incorporated (Ni-Tec), the low bidder under invitation for bids (IFB) No. DAAB07-81-B-0822, issued for a requirement of "night vision sights" by the United States Army Communications and Electronics Materiel Readiness Command (Army), Fort Monmouth, New Jersey. Numax contends that Ni-Tec should have been found to be nonresponsible for the alleged failure to meet a definitive responsibility standard for the procurement. Based upon our review of the record, the protest is denied.

[The subject IFB contained a definitive standard of responsibility in subsection L.81. Briefly stated, the subsection required that to be considered eligible for award, a bidder was to have had an Army contract for the identical item after January 1, 1977, or was to have successfully produced a similar "complex high quality optical device [having certain specified characteristics] at a rate of at least 75 per month for six consecutive months." If a bidder asserted compliance with the requirement relating to production of a similar device, the bidder was also to meet other requirements for engineering labor.]

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(Although Ni-Tec could not qualify as a prior producer of the identical item, the Army's preaward survey team found that the company met all requirements for qualification as a producer of a similar item.) As stated by the Army's contracting officer:

"Ni-Tec has demonstrated that it has produced [a similar] optical device as required at a rate of 75 per month for 6 consecutive months. The devices that Ni-Tec produced are its night vision sights NVS models 700 and 800 which are made essentially to drawings from the AN/PVS-4 and AN/TVS-5.

"The engineering team verified that Ni-Tec did produce a complex high quality item at the required production rates. [The subsection] states that a real image forming system with six or more optical elements and [an] entrance pupil of 75mm or greater outside diameter must be met. Ni-Tec provided drawings showing an entrance pupil of 75 mm or greater outside diameter.

"[The subsection also] requires certain modulation transfer function (MTF) values to be met by the equipment. Ni-Tec states that the units it produced for the first article test qualification under ERADCOM contract DAAK20-79-C-0001 involved the identical item produced under the commercial production run which met the production rate requirement. The units for the first article test qualification were produced from the same material, and the same lots and production line from which the commercial production lenses were made, and they were produced at the same time as the commercial production lenses. These First Article units


were found to have met MTF value requirements.

"[Finally] Ni-Tec provided the required resumes and met all requirements for engineering labor."

Numax has offered no evidence to support its contention that Ni-Tec fails to meet the special standard of responsibility relating to production of a similar item set forth in subsection L.81; moreover, the record does not support its position. In this instance, there is present substantial, objective evidence relevant to the definitive responsibility requirement favorable to Ni-Tec. This, in itself, is sufficient to satisfy our review standard here as the relative quality of the evidence is a matter for the judgment of the contracting officer, not our Office. Courier-Citizen Company, B-192899, May 9, 1979, 79-1 CPD 323.

Numax also questions any award to Ni-Tec on the ground that the proposed awardee is, allegedly, not a small business. Whether or not Ni-Tec is a small business is irrelevant since the subject procurement is not a small business set-aside. In any event, the Army has informed us that Ni-Tec has recently been "recertified to be a small business concern for procurements with a size standard of 500 employees."

For the reasons stated, the protest is denied.



Acting Comptroller General
of the United States